

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: FINNEY INDUSTRIAL PAINTING, INC.	ADMINISTRATIVE ORDER NO. 2012-AQ-04 NO. 2012-WW-06
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TO: Finney Industrial Painting, Inc.
Wilson O. Finney, Owner and Registered Agent
200 N. 22nd Street.
Fairfield, Iowa 52556

I. SUMMARY

This order requires you to submit air quality construction permit applications to DNR for any unpermitted and un-exempt sources, to submit an NPDES permit application or, if applicable, a "No-Exposure Certification" to DNR, to provide additional information or assistance to DNR during the permitting process, and to pay a penalty of \$7,500.00, subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Terry Jones
Environmental Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 West Madison Street
Washington, Iowa 52353-1623
Phone: (319) 653-2856

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code

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chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that division; Iowa Code section 455B.175, which authorizes the Director to issue an order directing a person to take such action as may be necessary to ensure that a violation of Iowa Code chapter 455B, Division III, Part I (water quality), and the rules promulgated or permits issued pursuant to that part of this division will cease; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Finney Industrial Painting, Inc. (Finney) is located within the city limits of Fairfield, Jefferson County, Iowa. The facility fabricates and paints/coats a variety of components needed by its customers. Some parts are cleaned in an on-site parts washer (zinc phosphate), dried in a natural gas dry-off oven, and painted in an on-site paint booth.
2. Finney failed to timely obtain air quality construction permits, as required. The current Finney building in Fairfield was constructed in 2002 after fire destroyed the previous building in March 2001. The new building includes a dry-off oven and paint booth. These emission units are sources of emissions to the outside atmosphere. Therefore, Finney should have obtained air quality construction permits from DNR prior to installation and operation of the equipment.
3. Finney also failed to timely obtain a National Pollutant Discharge Elimination System (NPDES) permit (storm water permit), as required. As explained below, Finney falls within Standard Industrial Classification (SIC) codes 3471 and 3479. Facilities utilizing these SIC code categories are considered to be engaged in "industrial activity," thus requiring Finney to obtain NPDES General Permit No. 1 for storm water discharge associated with industrial activity. Since Finney does not have the appropriate NPDES permit, Finney has engaged in the unpermitted disposal of storm water.
4. On June 8, 2009, DNR Field Office No. 6 received a complaint that Finney was mixing and storing paints outside and that the paint was overflowing or being dumped into the City of Fairfield's storm sewer. The complainant further stated that Finney did not have appropriate air quality controls.
5. On June 15, 2009, Terry Jones of DNR Field Office No. 6 met with Wilson Finney, the owner of the Finney facility. Mr. Jones observed a large dry-off oven and paint booth operating in the Finney building, installed to discharge to the outside atmosphere. These emission units were installed and operating without first obtaining air quality construction permits, as required.
6. During his June 15, 2009, visit to the Finney facility, Mr. Jones also observed a three-stage parts washer, which uses a phosphate wash for cleaning

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parts prior to coating. This parts washer discharges to the City of Fairfield's publicly owned treatment works (POTW) sanitary sewer collection system. Mr. Jones discussed with Mr. Finney the applicability of metal finishing categorical standards for the parts washer, as well as the storm water permitting requirements. Following his visit to the Finney facility, Mr. Jones also informed City of Fairfield officials of the need for a Treatment Agreement with Finney.

7. On June 23, 2009, DNR Field Office No. 6 sent a Notice of Violation (NOV) letter to Finney for failing to obtain air quality construction and storm water permits. The NOV letter further explained that the use of the phosphate wash in the parts washer at Finney classifies the process as a metal finishing categorical process subject to federal pretreatment categorical standards found at 40 CFR Part 433. Therefore, DNR required that Finney enter into a Treatment Agreement with the City of Fairfield to allow Finney to continue discharging process water from its parts washer operation into the City of Fairfield's POTW sanitary sewer collection system. The purpose of the Treatment Agreement is to require Finney to provide pretreatment to reduce the amount of pollutants in its wastewater prior to entry into the city's sanitary sewer. This pretreatment would help to ensure the city's POTW could meet applicable requirements, including the requirements of its own NPDES permit. DNR reviews Treatment Agreements for conformance to federal and state pretreatment requirements. The June 23, 2009, NOV letter required that applicable forms and applications be submitted to DNR by no later than August 15, 2009.

8. From August 2009 through March 2010, the City of Fairfield worked to collect data for the required Treatment Agreement. An application for a Treatment Agreement between the City of Fairfield and Finney was submitted to DNR on March 1, 2010, by the City of Fairfield. The Standard Industrial Classification (SIC) categories for Finney were listed as 3471 and 3479 on the Treatment Agreement application. The facilities in these SIC categories are considered to be engaged in "industrial activity." This information further confirmed the position previously taken by DNR that Finney is required to obtain a storm water (NPDES) permit.

9. On April 1, 2010, a second NOV letter was issued to Finney for failing to submit storm water and air quality construction permit applications, as required. The April 1, 2010, NOV letter referenced the June 23, 2009, NOV letter and provided Finney additional time until May 15, 2010, to submit the information requested in the June 23, 2009, letter. However, Finney did not submit the required permit applications to DNR by May 15, 2010, as requested.

10. On June 8, 2010, Terry Jones of DNR Field Office No. 6 contacted owner Wilson Finney by phone and asked about information previously required. Finney requested faxed copies of the two NOV letters. Copies of the June 23, 2009, and April 1, 2010, letters were faxed to Mr. Finney on June 8, 2010. An accompanying fax cover sheet summarized the activities to date and required that

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the requested information be provided to DNR by July 1, 2010. However, Finney again failed to comply with the request to provide information.

11. Wilson Finney, the owner and registered agent of Finney, specifically has been made aware of the requirement to obtain air quality construction permits in the past. DNR issued Administrative Order No. 2001-AQ-28-A to Mr. Finney on March 4, 2001, regarding failure to obtain air quality construction permits for another business owned by Mr. Finney, Finney Auto Body and Frame.

12. On April 18, 2011, DNR sent a draft administrative consent order to Finney, requesting that Finney work with DNR towards resolution of these violations. Finney did not reply. On July 18, 2011, DNR again sent a draft administrative consent order to Finney, requesting that Finney work with DNR towards resolution of these violations. Finney did not reply.

13. As of January 2012, Finney has not applied for air quality construction permits or an NPDES permit, as required.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 22.1(1) requires that unless exempt, no person shall construct, install, reconstruct, or alter any equipment, control equipment, or anaerobic lagoon without first obtaining a construction permit from DNR. Finney failed to obtain air quality construction permits prior to installation and operation of equipment located at its Fairfield facility.

3. 567 IAC 64.4(2)"a"(1) states the director of DNR may issue general permits that are consistent with 567 IAC 64.4(2)"b" and the requirements specified in 567 IAC 64.6, 64.7, 64.8(2), and 64.9, for storm water point sources requiring an NPDES permit pursuant to federal Clean Water Act Section 402(p) and 40 CFR 122.26. The Standard Industrial Classification (SIC) categories for Finney were listed as 3471 and 3479 on the Treatment Agreement application submitted to DNR on March 1, 2010. These categories are considered to be engaged in "industrial activity." Therefore, Finney was required to obtain NPDES General Permit No. 1. Finney failed to do so.

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V. ORDER

THEREFORE, DNR orders Finney to do the following:

1. By no later than April 1, 2012, submit to DNR air quality construction permits for any unpermitted and un-exempt sources of emission to the outside atmosphere at its Finney facility in Fairfield, Iowa, and at any other Finney facility in the State of Iowa;
2. By no later than April 1, 2012, submit to DNR an NPDES permit application or, if applicable, a "No-Exposure Certification" form for its facility in Fairfield, Iowa, and for any other Finney facility in the State of Iowa;
3. Provide any additional information or assistance to DNR during the permitting process, as necessary; and
4. Pay a penalty of \$7,500.00 within 60 days of the date this order is signed by the Director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,500.00 is assessed by this administrative order. The penalty must be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the water quality violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Finney saved time, money and effort by not complying with the DNR's air quality and storm water regulations. Construct and operation of

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emission units without air quality construction permits allowed Finney to avoid operating restrictions and recordkeeping requirements. Finney also has avoided storm water permitting fees that would total between \$1,000.00 to \$1,400.00 (depending on whether the permit fees were paid annually or for five-year periods). Therefore, a penalty of \$1,500.00 is assessed for economic benefit.

Gravity of the Violation – Wilson Finney, the owner and registered agent of Finney, specifically has been made aware of the requirement to obtain air quality construction permits in the past. DNR issued Administrative Order No. 2001-AQ-28-A to Mr. Finney in 2001, regarding failure to obtain air quality construction permits for another business owned by Mr. Finney, Finney Auto Body and Frame. Therefore, Mr. Finney should have been aware of the need to submit applications for air quality construction permits for the installation of equipment at the current Finney facility, which was constructed in 2002. Since previous knowledge can be documented, a penalty of \$3,000.00 is assessed for the gravity of the violations.

Culpability – Finney has failed repeatedly to respond to DNR's requests for information and for air quality construction permit and storm water permit applications. Finney's failure to communicate with DNR to address known deficiencies can be viewed as an intentional and deliberate attempt to avoid compliance. Further, as stated above, Finney owner Wilson Finney had previous actual knowledge of the requirement to timely obtain air quality construction permits. For this reason \$3,000.00 should be assessed for this culpability.

VII. APPEAL RIGHTS

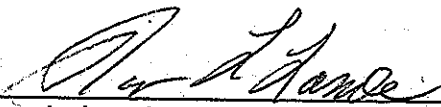
Pursuant to Iowa Code sections 455B.138 and 455B.175 and 567 IAC 7 4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this administrative order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa

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Code sections 455B.146 and 455B.191. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 9th day of
February, 2012.

Jefferson County Air Quality File; Anne Preziosi; DNR Field Office 6; VII.A.1.